

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of

<b>SAL SPECTRUM, LLC</b>	)	File No. 0007557048
	)	WT Docket No. 16-392
For Extension of Coverage Showing Deadline for	)	
700 MHz Lower B-Block Authorization, Call Sign	)	
WQJQ812, CMA 652 (Texas RSA No. 1)	)	

To: Chief, Wireless Telecommunications Bureau

**WRITTEN *EX PARTE* FILING BY SAL SPECTRUM, LLC**

SAL Spectrum, LLC, a wholly-owned subsidiary of ATN International, Inc. (collectively, “ATN”), by its attorney and pursuant to the Commission’s Public Notice, DA 16-1301, released November 18, 2016 (“*Request for Comments Notice*”), hereby submits this *ex parte* filing to supplement the record in the above-referenced proceeding. This filing addresses two matters: a) the untimely comments filed in the guise of “Reply Comments” by the Rural Wireless Association (“RWA”) on behalf of unnamed members; and b) the recent release by the Mobility Division (“Division”) of its decision in an almost identical case, *T-Mobile License LLC*, DA 16-1429, released December 21, 2016 (“*Charter*”), where the Division granted partial relief.

**RWA’s Untimely Comments**

The *Request for Comments Notice* announced the filing of ATN’s above-captioned application, and set a deadline for any comments in opposition to the grant of that application – December 8, 2016. RWA did not file any timely comments in opposition. Rather, on December 19, 2016, the last day for filing replies to any timely-filed comments, RWA filed comments directed against the application, slapping on the title “Reply Comments” to avoid having to seek

a request for extension of time to file its initial comments (which its so-called “Reply Comments” were).<sup>1</sup>

As such, the RWA “Reply Comments” are analogous to an untimely petition to deny. At least in the absence of a legitimate excuse for the untimeliness, an untimely petition to deny is dismissed without consideration of its substance. *See, e.g., GCI Comm. Corp.*, 28 FCC Rcd 10433, 10466-7 (¶¶82-84) (2013) (“*GCI*”). This is so even if even if it is only one day late. *Star Wireless, LLC*, 28 FCC Rcd 243, 246-7 (¶¶11-12) (Mob. Div., 2013) (“*Star*”). Here, RWA was eleven days late without even pretending to have a reason for its untimeliness. As such, the RWA “Reply Comments” must be disregarded, the same as happened to the untimely oppositions in *GCI* and *Star*.<sup>2</sup>

In any event, in the context of 700 MHz licenses originally issued as part of Auction 73, RWA’s substantive arguments have already been rejected in the recent Division decision in *Charter*, discussed below.

### **The *Charter* Decision**

Although the letter decision in *Charter* (released less than thirty days ago) was nominally addressed to T-Mobile License LLC (“T-Mobile”), it actually afforded an extension of the

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<sup>1</sup> Since ATN’s Comments simply supported the initial request, and clarified that the initial request included any partial, lesser-included relief which the Commission might deem appropriate, the ATN Comments did not present a vehicle “opening the door” for untimely opposition pleadings. It is not possible for anyone to have supported the main ATN request (for an extension of both the first construction deadline and the otherwise-accelerated second construction deadline) while opposing the lesser-included alternative request (for a shorter-than-originally-sought extension of only the second construction deadline).

Stated simply, RWA filed untimely without any excuse for having done so.

<sup>2</sup> The Commission’s consistently refuses to countenance such gamesmanship as was exhibited here by RWA in many contexts. *See, e.g.,* 47 CFR §1.106(b)(1) (late-filed entry as an interested party is allowed only if the person can show it “was not *possible* for him to have participated [earlier]”) (emphasis added); 47 CFR §1.115(a) (same language); *Canyon Area Residents for the Environment*, 14 FCC Rcd 8152, 8154 (¶7) (1999).

second construction deadline to the licensee of the three involved 700 MHz licenses, which licensee is not T-Mobile, but, rather, a subsidiary of Charter Communications (“Charter”), the large cable operator. In that case, Charter, which had done nothing toward constructing *any* of the 700 MHz licenses it had won in Auction 73, had contracted to sell all of its Auction 73 licenses to T-Mobile a few months prior to the first construction deadline. T-Mobile, in turn, promised the Commission a number of things it would do when constructing, if and only if the Commission gave the parties an extension of what otherwise would have been a second (75% coverage) deadline of June 13, 2017.

47 CFR §1.946(e)(3) specifically prohibits the grant of an extension of a construction deadline based on the sale or assignment of the license to another party, and thus, in normal circumstances, would have doomed the Charter/T-Mobile extension request. However, as the Division properly recognized in granting relief to Charter/T-Mobile, over the objections of RWA, the situation with respect to 700 MHz licenses has been anything but normal. The Division found that the underlying purpose of Section 27.14(g)(1) – the 700 MHz construction deadline rule – would not be served by applying the rule under the circumstances. Specifically, the Division found that the promotion of service to rural areas – a key purpose of Section 27.14(g)(1) -- would be best served by the grant of an extension of the second construction deadline. *Charter*, p.3.

ATN’s case is even less problematic than was the situation in *Charter*. ATN has six Auction 73 licenses in total, and timely built out the other five, unlike Charter. ATN’s 700 MHz licenses are all in remote, rural areas, and they all involve either very poor populations or poor Tribal populations. ATN admittedly focused its limited resources on timely putting into operation those 700 MHz facilities aimed at serving residents of Tribal lands, particularly the

700 MHz broadband service ATN provides on the Navajo Reservation through its partially-owned affiliate, NTUA Wireless.<sup>3</sup> This was an appropriate buildout approach to meet the needs of unserved and disadvantaged populations.

The Commission is required to treat similarly-situated persons the same.<sup>4</sup> ATN's case (at least insofar as it involves ATN's alternative request for lesser relief) is on all fours with *Chartered, supra*. Therefore, ATN's request for an extension of its license period and its second construction deadline until December 13, 2017 should be granted.

Respectfully submitted,  
**SAL SPECTRUM, LLC**

January 10, 2017

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<sup>3</sup> NTUA Wireless is owned 49% by ATN and managed by ATN. The other 51% of NTUA Wireless is owned by the Navajo Tribal Utility Authority, an instrumentality of the Navajo Nation government.

<sup>4</sup> See, e.g., *Telephone and Data Systems v. FCC*, 19 F.3d 42 (DC Cir., 1994); *Melody Music, Inc. v. FCC*, 345 F.2d 730 (DC Cir., 1965).